IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 6066 OF 2007

Vinita Aswani & ors.... Petitioner

versus

Smt. Tilotama Ranchandra Shingid
& ors.. .... Respondent.

Mr. Ketan A. Chothari & Anand P.Lavate for the petitioners.
Mrs. S.A.Dhamale for Respondents 1 to 3.

CORAM; A.P. DESHPANDE, J.
DATED; 04TH OCTOBER, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The present petitioners are legal representatives of original Plaintiff by name Shrichand Hatchand Hariyani. The original Plaintiff instituted a suit for specific performance of an agreement under which the Plaintiffs claim to have purchased 1/3 undivided share in the suit property, which is a flat, comprised in Co-op. housing society. According to the Plaintiff he entered into an agreement with a view to purchase 1/3 undivided share in the said flat from one Ramchandra. The other two persons having 1/3 share in the flat are Shri Nagul and Shri Kedari. The subject

matter of the suit filed by the Plaintiff is for the purchase of 1/3 undivided share in the flat which was claimed to be owned by Ramchandra. The defendant/respondents are the legal representatives of Ramchandra, who are disputing the plaintiff's right under the said agreement.

3. It is averred by the Plaintiff in the plaint that Ramchandra had instituted a dispute bearing No.49/78 in the Co-operative Court No.II against Shri Nagul and Shri Kedari. It is then stated that the said dispute was settled amicably. It is categorically averred in the plaint that it was informed to the original Plaintiff that the dispute was settled by the compromise decree. It is the case of the Plaintiff that subsequent to the filing of the suit, when they were brought on record as legal heirs of the original Plaintiff they tried to obtain certified copy of the compromise decree, when they came to know that no compromise decree was passed but on the basis of the compromise pursis filed before the Co-operative Court, the dispute No.49/78 was withdran. Realising that an incorrect statement of fact has been made in the plaint, the Plaintiffs moved an application for amendment of the plaint under Order 6 Rule 17 of CPC and the rejection of the said application by the trial court has given rise to the filing of the present writ petition.

4. What is sought to be amended is only a statement made in the plaint that a compromise decree was passed in the dispute filed by Ramchandra. What is proposed to be brought on record is that the dispute was compromised by filing compromise pursis in the dispute and the dispute was withdrawn and no compromise decree was passed. The proposed amendment is intended to correct the incorrect statement of fact which in no way goes to change the nature of the dispute. The Plaintiffs claim 1/3 share from Ramchandra, but instead of pleading that Ramchandra got the share under compromise decree, what is proposed to be pleaded is Ramchandra had 1/3 share under compromise pursis, acting on which the suit was withdrawn. It is difficult to understand as to how come the nature of the suit is changed by granting the proposed amendment, which is the finding recorded by the trial court. Amendment does not in any manner change the nature of the suit. The defendants are in no way prejudiced if the plaintiff is permitted to correct the incorrect statement made in the plaint, which hardly has any bearing on the issues in dispute. Reference to the proviso to Order 6 Rule 17 is also misconceived, as amendment of CPC has come into force from 1-7-2002 whereas the suit is filed in the year 2001. The impugned order passed by the trial court is unsustainable in law and patent illegality it is to be

corrected by exercising writ jurisdicition.

5. In the result, writ petition is allowed. Impugned order passed by the trial court is quashed and set aside. The application moved by the plaintiff seeking amendment to the plaint is also allowed. Plaintiff shall carry out the amendment and if the defendants want to carry out consequential amendment, the defendants are permitted to carry out the consequential amendment. The court shall proceed to decide the suit in accordance with the law on merit.

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